

**REMARKS**

This communication is responsive to the Examiner's Report mailed 27 April 2007. Prior to this paper, claims 8-11, 19, 33, 42 and 46 were cancelled and claims 15, 17, 20, 27, 28, 31, 32 and 34-40 were withdrawn pursuant to a species election. In this paper, the Applicant has amended claims 3, 6, 7, 18, 21, 22-25, 30, 41, 44, 48, 49 and 54. These amendments are submitted to be completely supported by the application as originally filed and to add no new matter.

As a result of the cancellations and withdrawals discussed above, claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41, 43-45 and 47-55 are pending.

**Claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 49-55**

The Examiner has raised the combination of "Steeler Inc. - Deflection Track" (Steeler Inc.) and US patent No. 6,374,558 (Surowiecki) in connection with claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 49-55. The Applicant submits that claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 49-55 patentably distinguish the combination of Steeler Inc. and Surowiecki.

As understood by the Applicant, Steeler Inc. discloses a deflection track for ceiling connections of non-load bearing walls that "may allow ceilings to deflect under loading without affecting the wall beneath". The "track height is able to expand and contract to allow for the ceiling deflection." Standard lower track is used in walls that incorporate the deflection track.

As correctly identified by the Examiner on page 3 of the Office Action, Steeler Inc. does not disclose or suggest the particulars of the deformable portion recited in the claims. The Applicant submits that Surowiecki fails to remedy this deficiency.

As understood by the Applicant and shown best in Figures 1, 1A and 2, Surowiecki discloses a construction beam having a horizontal web (10) and first and second spaced-apart flanges (11, 12) which depend vertically from web (10) to define a generally U-shaped channel (13). Flanges (11, 12) include ridges (17) which project into the channel. Surowiecki explicitly

states at col. 6, ln. 4-7 that ridges (17) are "running longitudinally with the channel and projecting inward of the channel a distance as required for selective stiffening of the flange for increased strength and rigidity" – [emphasis added]. As shown best in Figure 1, ridges (17) extend longitudinally along channel (13). However, ridges (17) are interrupted at spaced apart slots (18) to provide chutes (33). As explained in detail at col. 6, ln. 19-60, slots (18)/chutes (33) of the the Surowiecki system are required to receive vertically extending studs (32), such that studs (32) are permitted to move vertically within slots (18)/chutes (33) while being constrained from horizontal movement by ridges (17). Surowiecki expressly states that it is an object of the Surowiecki system to provide that "while the stud is free to move vertically, in the beam, lateral movement of the stud in the beam is substantially impeded" – see col. 2, ln. 21-23. This express object of the Surowiecki system is provided by ridges (17) which define slots (18)/chutes (33).

The Examiner expresses the view that Figure 9 of Surowiecki discloses the features of the deformable portion as recited in claim 1. The Applicant respectfully disagrees. Figure 9 of Surowiecki describes an alternative embodiment of the Surowiecki beam, wherein rectangular ridges (55) and rims (58) replace ridges (17) of the Figure 1 embodiment – see col. 4, ln. 30-38. In contrast to ridge (55) and rims (58), claim 1 recites "each leg comprising a deformable portion ... wherein each deformable portion is bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and each of the bends is at least one of: compressible to reduce its interior angle and expandable to increase its interior angle" – [emphasis added]. As explained above and explicitly stated explicitly col. 6, ln. 4-7, the ridges of the Surowiecki system (e.g. ridges (55) shown in Figure 9) are provided "as required for selective stiffening of the flange for increased strength and rigidity". Ridges (55) of the Surowiecki system are not "deformable portions" as recited in claim 1. In contrast, the Surowiecki ridges (55) are expressly recited to provide flanges (11, 12) with increased rigidity.

Based on this reasoning, the Applicant respectfully submits that Surowiecki fails to remedy the deficiencies with Steeler Inc. and that claim 1 patentably distinguishes the combination of Steeler Inc. and Surowiecki. Claims 2-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 49-55 depend from claim 1 and are submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least this reason.

Additional Comments With Respect to Claims 3-7, 12-14, 16, 21-26, 29, 30 and 41

Claims 3-7, 12-14, 16, 21-26, 29, 30 and 41 depend from claim 1 and are submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least the reasons discussed above. In addition to the reasons set out above, the Applicant submits that claims 3-7, 12-14, 16, 21-26, 29, 30 and 41 recite features which further distinguish the combination of Steeler Inc. and Surowiecki.

In addition to the reasons discussed above, claim 3 recites "wherein, for the deformable portion of each leg, the four or more longitudinally-extending bend lines and the four or more corresponding bends extend longitudinally to be substantially longitudinally coextensive with their corresponding leg to provide at least one deformable groove that extends in the longitudinal direction to be substantially longitudinally coextensive with its corresponding leg ..." – [emphasis added]. This feature of the claim 3 "deformable portion" contrasts directly with the ridges (e.g. ridges (55)) of the Surowiecki system. The longitudinal dimensions of the Surowiecki ridges are interrupted at various spaced apart slots (18) to provide chutes (33). The Surowiecki system requires slots (18)/chutes (33) to satisfy the express objective of constraining longitudinal movement of studs (32), while allowing studs (32) to move vertically within slots (18)/chutes (33) – see col. 2, ln. 21-23.

The Applicant submits that claim 3 (as amended) patentably distinguishes the combination of Steeler Inc. and Surowiecki for at least this additional reason. Claims 4-7, 12-14, 16, 21-26, 29, 30 and 41 depend from claim 3 and are also submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least this additional reason.

Additional Comments With Respect to Claim 18

Claim 18 depends from claim 1 and is submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least the reasons discussed above.

Claim 18 also recites features that are similar to those of claim 3 and which are submitted to further patentably distinguish the combination of Steeler Inc. and Surowiecki. More particularly, claim 18 recites "wherein, for the deformable portion of each leg, the four or more

longitudinally-extending bend lines and the four or more corresponding bends extend longitudinally to be substantially longitudinally coextensive with their corresponding leg to provide a plurality of deformable grooves, each deformable groove extending in the longitudinal direction to be substantially longitudinally coextensive with its corresponding leg ..." – [emphasis added]. As discussed above in connection with claim 3, the Surowiecki ridges are interrupted by slots (18)/chutes (33). Surowiecki fails to teach or suggest four or more longitudinally extending bend lines which are "substantially longitudinally coextensive" with their corresponding legs as recited in claim 18.

The Applicant respectfully submits that claim 18 (as amended) patentably distinguishes the combination of Steeler Inc. and Surowiecki for at least this additional reason.

*Additional Comments With Respect to Claims 5-7*

Claims 5-7 depend from claim 1 and are submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least the reasons discussed above.

Claims 5-7 recite various angular ranges for the angles for the four bends of the deformable portion prior to deformation (claim 5), after compression to a relatively compressed state (claim 6) and after expansion to a relatively expanded state (claim 7). As correctly identified by the Examiner on page 3 of the Office Action, Steeler Inc. fails to disclose deformable portions having four bends. Claim 5 recites that each of the four bends has an angle in a range between 105° and 165° prior to deformation and claims 6 and 7 (which have been amended to depend from claim 5) recite that this angular range changes when the deformable portions are compressed or expanded. As discussed above, Surowiecki fails to teach or suggest any deformable portions in flanges (11, 12). In contrast, flanges (11, 12) are provided with ridges (e.g. ridges (17, 55)) for increased rigidity. Furthermore, Surowiecki fails to teach or suggest four different bends having angles in a range between 105° and 165° as recited in claim 5 or that these angular ranges could change with deformation (i.e. compression as recited in claim 6 or expansion as recited in claim 7). It would not be obvious to modify the Surowiecki system to provide ridges having four angles with these different angular ranges because Surowiecki expressly teaches that the ridges are provided for increased rigidity and not for deformation.

Based on this reasoning, the Applicant submits that claims 5-7 further patentably distinguish the combination of Steeler Inc. and Surowiecki.

Additional Comments With Respect to Claim 30

Claim 30 depends from claim 1 and is submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least the reasons discussed above.

Claim 30 also recites "wherein the opposing track is substantially similar to the track and an opposing end of each stud is coupled to the opposing track in a manner that permits relative movement between the stud and a web of the opposing track" – [emphasis added]. Neither Steeler Inc. nor Surowiecki disclose or suggest such a feature.

Steeler Inc. expressly teaches that its "deflection track" is used for "ceiling connections of non-load bearing walls" and that "standard lower track is used in these walls" – [emphasis added]. This standard lower track is not "substantially similar" to the deflection track as recited in claim 30 nor does this standard lower track permit "relative movement between the stud and a web of the opposing track" as recited in claim 30.

Surowiecki teaches, at col. 2, ln. 65-col. 3, ln. 7, that "the chuted beam ... may be employed as a header" and that the stud "rests on the footer beam. This footer beam may be a simple channel beam without alignment or retaining devices, because the stud is already vertically aligned by the header beam" – [emphasis added]. This simple channel footer beam disclosed by Surowiecki is not "substantially similar" to the header track as recited in claim 30 nor does this simple channel footer beam permit "relative movement between the stud and a web of the opposing track" as recited in claim 30.

Based on this reasoning, the Applicant submits that claim 30 further patentably distinguishes the combination of Steeler Inc. and Surowiecki.

**Claims 43-45**

The Examiner has raised the combination of Steeler Inc. and Surowiecki in connection with claims 43-45. The Applicant submits that claims 43-45 patentably distinguish the combination of Steeler Inc. and Surowiecki.

The Examiner correctly states on page 3 of the Office Action that Steeler Inc. does not disclose or suggest the particulars of the deformable portion recited in the claims. The Applicant submits that Surowiecki fails to remedy this deficiency.

Claim 43 recites "at least one of the legs having a deformable portion located between its distal edge and the elongated member, the deformable portion bent along four or more longitudinally-extending bend lines to form four or more corresponding bends, each bend being at least one of: compressible to reduce its interior angle and expandable to increase its interior angle" – [emphasis added]. The Examiner appears to contend that this claim 43 feature is disclosed by Figure 9 of Surowiecki. As discussed above (in connection with claim 1) and explicitly stated explicitly col. 6, ln. 4-7, the ridges of the Surowiecki system (e.g. ridges (55) shown in Figure 9) are provided "as required for selective stiffening of the flange for increased strength and rigidity". Ridges (55) of the Surowiecki system are not "deformable portions" as recited in claim 43. In contrast, the Surowiecki ridges (55) are expressly recited to provide flanges (11, 12) with increased strength.

Based on this reasoning, the Applicant respectfully submits that Surowiecki fails to remedy the deficiency with Steeler Inc. and that claim 43 patentably distinguishes the combination of Steeler Inc. and Surowiecki. Claims 44 and 45 depend from claim 43 and are submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least this reason.

**Additional Comments With Respect to Claims 44 and 45**

Claims 44 and 45 depend from claim 43 and are submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least the reasons discussed above.

In addition to the reasons discussed above, claim 44 recites "wherein, for the deformable portion of each leg, the four or more longitudinally-extending bend lines and the four or more corresponding bends extend longitudinally to be substantially longitudinally coextensive with their corresponding leg ..." – [emphasis added]. As discussed above in connection with claim 3, this feature of the claim 44 "deformable portion" contrasts directly with the ridges (e.g. ridges (55)) of the Surowiecki system which are interrupted at various spaced apart slots (18) to provide chutes (33). The Surowiecki system requires slots (18)/chutes (33) to satisfy the express objective of constraining longitudinal movement of studs (32) while allowing studs (32) to move vertically within slots (18)/chutes (33) – see col. 2, ln. 21-23.

The Applicant submits that claim 44 (as amended) patentably distinguishes the combination of Steeler Inc. and Surowiecki for at least this additional reason. Claim 45 depends from claim 44 and is also submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least this additional reason.

#### Claims 47-49

The Examiner has raised the combination of Steeler Inc. and Surowiecki in connection with claims 47-49. The Applicant submits that claims 47-49 patentably distinguish the combination of Steeler Inc. and Surowiecki.

The Examiner correctly states on page 3 of the Office Action that Steeler Inc. does not disclose or suggest the particulars of the deformable portion recited in the claims. The Applicant submits that Surowiecki fails to remedy this deficiency.

Claim 47 recites "wherein at least one of the one or more legs comprises a deformable portion bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and deforming the one or more legs comprises at least one of: compressing at least one of the four or more bends to reduce its interior angle and expanding at least one of the four or more bends to increase its interior angle" – [emphasis added]. The Examiner appears to contend that this claim 47 feature is disclosed by Figure 9 of Surowiecki. As discussed above (in connection with claim 1) and explicitly stated explicitly col. 6, ln. 4-7, the ridges of the

Surowiecki system (e.g. ridges (55) shown in Figure 9) are provided "as required for selective stiffening of the flange for increased strength and rigidity". Ridges (55) of the Surowiecki system are not "deformable portions" as recited in claim 47. In contrast, the Surowiecki ridges (55) are expressly recited to provide flanges (11, 12) with increased rigidity.

Based on this reasoning, the Applicant respectfully submits the claim 47 patentably distinguishes the combination of Steeler Inc. and Surowiecki. Claims 48 and 49 depend from claim 47 and are submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least this reason.

*Additional Comments With Respect to Claims 48 and 49*

Claims 48 and 49 depend from claim 47 and are submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least the reasons discussed above.

In addition to the reasons set out above, claim 49 recites "wherein, for each leg of the track, the four or more longitudinally-extending bend lines and the four or more corresponding bends are longitudinally coextensive with their corresponding leg to provide a deformable groove that is longitudinally coextensive with its corresponding leg ..." – [emphasis added]. As discussed above in connection with claim 3, this feature of the claim 49 "deformable portion" contrasts directly with the ridges (e.g. ridges (55)) of the Surowiecki system, which are interrupted at various spaced apart slots (18) to provide chutes (33). The Surowiecki system requires slots (18)/chutes (33) to satisfy the express objective of constraining longitudinal movement of studs (32) while allowing studs (32) to move vertically within slots (18)/chutes (33) – see col. 2, ln. 21-23.

The Applicant submits that claim 49 (as amended) patentably distinguishes the combination of Steeler Inc. and Surowiecki for at least this additional reason. Claim 48 depends from claim 49 and is also submitted to patentably distinguish the combination of Steeler Inc. and Surowiecki for at least this additional reason.



**Conclusions**

In view of the amendments and arguments presented above, the Applicant submits that this application is now in condition for allowance and respectfully requests reconsideration and allowance of this application.

Respectfully submitted,  
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